BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

A COMMITTEE OF CONCERNED RESIDENTS, Appellant, v. CITY OF SEATTLE and LORRY CLARK, Respondents.	)	SHB No. 89-69 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter came on for hearing before the Shorelines Hearings Board, William A. Harrison, Administrative Appeals Judge, presiding, and Board Members Judith A. Bendor, Chair; Wick Dufford, Harold S. Zimmerman, Nancy Burnett, and Mary Lou Block.

The matter is a request for review of a shoreline substantial development permit granted by the City of Seattle to Lorry Clark for development of a restaurant with upstairs apartment on Alki Point. Appearances were as follows:

1. Appellant, A Committee of Concerned Residents by Michael A. Atkins, Attorney at Law.

2. Respondent City of Seattle by Margaret Klockars, Assistant City Attorney,

3. Respondent Lorry Clark by John L. Hendrickson and Ann Whitmore, Attorneys at Law.

The hearing was conducted on April 19, 1990, in Seattle Washington.

Bibi Carter of Gene Barker and Associates provided court reporting services.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter arises on Alki Point in Seattle. It concerns an application to build a restaurant on the upland side of Alki Avenue facing Alki Beach.

II

The proponent of the restaurant, respondent Lorry Clark, applied to the City of Seattle for a shoreline substantial development permit. As initially proposed, the restaurant was two stories, encompassed 2,796 square feet and included a cockail lounge and food service take-out window. Notice of this applicaton was published in the Daily Journal of Commerce on February 2 and 9, 1989. Four placards were posted on or near the site giving notice of the application. Finally, notice of the application was made by "general mailed release" to a subscription list including the Alki Community Council and the West Seattle Herald.

III

The notices of the application identified it as applicable to "2516 Alki Avenue SW". The correct address is 2514-2518 and 2518 1/2 Alki Avenue SW. The proposal involves construction of a new restaurant. However, there is an existing restaurant at 2616 Alki Avenue SW which is unaffected by this proposal. The notices further specified a period of 30 days, to March 10, 1989, for submission of public comment.

IV

On April 25, 1989, the City held a public meeting on the proposal. By then the City had received many letters from residents. These were largely adverse to the proposal. At the meeting speakers expressed concerns about litter, noise, traffic, parking, odors, zoning and effects of liquor.

V

Following the public meeting, respondent Clark downscaled the proposal to: 1) eliminate the cocktail lounge and food service take-out window, 2) confine the restaurant to the ground floor and limit it to approximately 2,000 square feet and 3) provide a single apartment unit on the second floor. Notice of this revision was published, posted, and mailed in the same way as previously. The City received two letters and petitions from neighbors opposed to the proposal.

VI

The City determined the proposal to be exempt from the State Environmental Policy Act (SEPA). In doing so it applied its municipal code exempting: 1) one dwelling unit, such as the proposed apartment, and 2) a restaurant of less than 4,000 square feet with associated parking facilities for fewer than 20 automobiles. Because the restaurant is a commercial use with a floor area smaller than 2,500 square feet, the City Land Use Code does not require that any parking be provided. However, one off-street parking space is required by the Code for the apartment. That space is included in the proposal.

VII

On November 2, 1989, the City granted a shoreline permit to Clark for the revised proposal. The permit required the one apartment-related parking space and required no parking spaces for the restaurant. On November 28, 1989, appellant, A Committee of Concerned Residents, filed its request for review with this Board.

VIII

A key concern in this matter, for all parties, is parking. Despite the lack of parking requirements for the restaurant, respondent Clark commissioned a parking study. It was conducted during October, 1989. That study met the Seattle Engineering Department standards for what is known as a "parking utilization" study.

A parking utilization study involves an actual count of the vehicles parked in a radius around the proposed restaurant. Here, the radius of 800 feet (2 1/2 blocks) was prescribed by City guidelines. The study determined that: 1) a minimum of 193 parking spaces are available, 2) counts on October 4, 1989 (a weekday) showed 116 vehicles parked and on October 7, 1989, (a weekend) showed 121 vehicles parked. At the time studied, parking utilization was therefore from 60 to 63% in the area in question.

Finally, the parking utilization study used standard references to estimate the additional parking demand to be brought on by the proposed restaurant. The restaurant would add a peak parking demand of 25 parking spaces on a weekday and 32 on a weekend. This is true despite the 76 seat capacity of the restaurant because patrons arrive and leave at different times. Thus, parking utilization would increase, with the restaurant, to 73 to 79%. Yet 27 to 21% of the supply (52 spaces weekday and 40 spaces weekend) would remain available to other than restaurant users.

IX

Appellants have also prepared a parking study, which is known as a "supply and demand" study. As such it does not meet Seattle Engineering Department requirements for measuring actual parking utilization. We do not find it persuasive concerning the actual parking effects of the proposal nor the use of parking at present.

X

Turning from October when Clark's parking study was made, a different picture emerges during the summer months. From the onset of warm weather in spring to its end in the fall, visitors to Alki Beach crowd the streets with traffic. Parking spaces are usually filled. Illegal parking often occurs. The incidence of "cruising" in automobiles and throngs of summertime visitors have left the area's streets in a state of congestion. To provide access for even emergency vehicles, Seattle Police must enforce an "anti-cruising" ordinance along Alki Avenue. Barricades at either end serve to regulate traffic there, but may divert traffic onto sorely congested neighborhood streets. Beach events sponsored by various radio stations and other groups attract up to 35,000 visitors at one time on a single day. At police request, 300 parking spaces along the water side of Alki Avenue are restricted to prevent parking after 10:00 p.m. due to concerns about crime. Police can therefore see the beach from patrol cars at night.

The sum total of summertime conditions at Alki Beach is one of traffic and parking congestion, and other problems, separate and apart from the effects of this small restaurant proposal. The additional parking brought on by this restaurant would not significantly alter the existing conditions. Because of the congestion already present, most summertime patrons of the restaurant would be residents or others already in the area.

XI

We find that this proposal is routine and will not significantly, adversely impact the environment.

XII

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

We review the proposed development for consistency with the Shoreline Management Act and applicable shoreline master program. RCW 90.58.140(2)(b). We also review the consistency of the shoreline permit action with the State Environmental Policy Act. WAC 461-08-175(1)(a). Appellant bears the burden of proof. RCW 90.58.140(7).

II

The issues in this case are those in the Pre-Hearing Order of January 11, 1990, combined with issues raised by appellant's Petitions and combined by Order entered March 9, 1990. The issues embrace the following topics: 1) notice, 2) SEPA, 3) parking and 4) permitted uses. We take these up in turn.

III

Notice. When an application is filed for a shoreline permit, notice must be given as set forth in the Shoreline Management Act (SMA) at RCW 90.58.140:

> *(4) The local government shall require notification of the public of all applications for permits governed by any permit system establishd pursuant to subsection (3) of this section by ensuring that:*
> *(a) A notice of such an application is published at least once a week on the same day of the week for two consecutive weeks in a legal newspaper of general circulation within the area in which the development is proposed; and*
> *(b) Additional notice of such an application is given by at least one of the following methods:*
> *(i) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred of the boundary of the property upon which the substantial development is proposed;*
> *(ii) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or*
> *(iii) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice of adjacent landowners and the public.*
>
> *The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive a copy of the final order concerning an application as expeditiously as possible after the issuance of the order, may submit the comments or request for the order.*
>
> *If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing. (Emphasis added.)*

WAC 173-14-070 implementing the SMA is to the same effect.

IV

In this case, the City published, mailed, and posted notice of the subject application. See Finding of Fact II, above. Appellants contend that the notice is flawed. We disagree. As stated by the Supreme Court:

> *The purpose of notice statutes is to apprise fairly and sufficiently those who may be affected of the nature and character of an action so they may intelligently prepare for the hearing.* Barrie v. Kitsap Co., *84 Wn.2d 579, 527 P.2d 1377 (1974).* Nisqually Delta Assocation v. DuPont, *103 Wn.2d 720, 696 P.2d 1222 (1985).*

Moreover, the standard for measuring compliance with notice statutes is one of substantial compliance. Allen v. Public Utility District No. 1, 55 Wn.2d 226, 234, 347 P.2d 539 (1959), P.U.D. No. 1 v. Newport, 38 Wn.2d 221, 228 P.2d 766 (1951), Davis v. Gibbs, 39 Wn.2d 481, 236 P.2d 545 (1951) and Dunn v. Centralia, 153 Wash. 495, 280 Pac. 26 (1929).

V

In Save Flounder Bay, et. al. v. Mousel and City of Anacortes, SHB No. 81-15 (1982), we reversed a shoreline permit where notice was neither mailed nor posted on the site. The facts of this case involve both mailng and posting. In Schwinge v. Town of Friday Harbor, SHB No. 84-31 (1985), we reversed a shoreline permit where the notice wrongly stated that the project was not proposed within wetlands and did not invite public comment. Here the putative errors were 1) an address discrepancy and 2) information concerning public information. Neither of these rise to the level of error in prior cases nor fail to apprise fairly. As to the address on the notice, it was within the range of addresses applicable to the site. Neither was it reasonable to confuse an existing restaurant with this proposed restaurant. As to notice of opportunity to comment, that was provided. The most

which might be said is that notices lacked the statutory wording, verbatim, that persons desiring to receive a copy of the final order may so request. Yet we believe this to be implicit in the notices' invitation to contact, for more information, the Master Use Information and Notification Center at a given address and telephone number.

Finally, we decline to look behind the City's selection of the Daily Journal of Commerce as its legal newspaper. The legislature has provided a statutory proceeding to approve and revoke approval of legal newspapers. Chapter 65.16 RCW. Pursuant to such proceedings the Daily Journal of Commerce was approved by court order in 1941. No evidence was presented showing that such approval has been revoked.

In summary, we conclude that notice of the instant shoreline application was made in substantial compliance with the SMA and apprised fairly and sufficiently those who may have been affected.

VI

Lastly, with regard to notice, appellants cite the SMA at RCW 90.58.140(3) which states:

> *The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section.*

From this appellant urges that the City must have a notice provision within its shoreline master program. Apparently the City has had such

a provision in the past but has repealed it using, instead, a notice provision applicable to numerous permits issued by the City. That provision, Seattle Municipal Code (SMC) 23.76.012(B), requires posting (subpart 2), mailing (subpart 3) and publication (subpart 5). While the publication subpart specifies "shoreline decisions", the City apparently construes that to include shoreline applications as shown in this case. Therefore SMC 23.76.012(B), as interpreted by the City to address applications, is a "program" for notice consistent with RCW 90.58.140(3). We conclude under RCW 90.58.140(3) that it need not be within the shoreline master program, so long as it conforms to the notice requirements of RCW 90.58.140(4), as it does here.

VII

State Environmental Policy Act (SEPA). Under the City's Code the proposed restaurant/apartment is exempt from SEPA as a mixed use with each use exempt. SMC 25.05.800(a)(2)(f). The construction of one dwelling unit is exempt under SMC 25.05.800(A)(2)(a). The restaurant is exempt as less than 4,000 square feet and less than 20 parking spaces. SMC 25.05.800(A)(2)(c)(ii). The latter exempts:

> *In all other zones, buildings with four thousand (4,000) square feet of gross floor area and with associated parking facilities designed for (20) automobiles; . . .*

The City urges that this provision means 4,000 squrae feet or less and parking for 20 automobiles or fewer. We agree. This is consistent with the evident intent to exempt minor new construction including the proposed neighborhood restaurant.

VIII

Exempt actions which are not routine and which will significantly affect the quality of the environment may be disqualified from exemption. Downtown Traffic Planning Committee v. Royer, 26 Wn.App. 156, 612 P.2d 430 (1980). However, we have found that this proposal is routine and will not significantly affect the quality of the environment. Therefore the proposal qualifies for the exemption stated in the SMC.

IX

Appellant cites a further means by which SEPA exemptions may be set aside. This is WAC 197-11-305(1)(b)(ii) referring to:

> *(ii) A series of exempt actions that are physically or functionally related to each other, and that together may have a probable significant adverse environmental impact. . . .*

As an example of the above, appellants cite the proposed restaurant in conjunction with: a) elimination of parking on Alki Avenue after 10:00 p.m., b) the anti-cruising ordinance, c) licensing of beach events and d) zoning for the area. Whether these events were exempt from SEPA does not appear on this record. Assuming they were, we cannot conclude that they are "physically or functionally related" to the proposed restaurant so as to be within the provision cited above. The restaurant is not the first phase of a larger scheme. See Downtown Traffic Planning, supra, and Settle, Washington State Environmental Policy Act, §12(b)(iv), 1987. Appellant's reference is to past City actions independent of this proposal. We conclude that WAC 197-11-305(1)(b)(ii) does not apply to this state of facts.

X

Parking. Appellant has not proven that the proposed restaurant and apartment are inconsistent with any parking requirement. Further, the availability of parking in winter and the minor effect of the proposal on parking in summer indicates that parking from the proposal will not materially alter the environment. We conclude that parking or other environmental effects of the proposal have not been shown to be inconsistent with SEPA or the SMA.

XI

Permitted Uses. The proposed restaurant and apartment would be within the Urban Stable environment on an upland lot. As such it is a permitted use under the Seattle Shoreline Master Program (SSMP). Section 23.60.608(A)(2). Appellant has not shown inconsistency, either, with SSMP 23.60.152 calling for development which minimizes impacts to surrounding land and water uses and for compatibility within the affected area. We conclude that the proposal has not been shown to be inconsistent with the SSMP.

XII

In summary, the shoreline permit granted here has not beeen shown to be inconsistent with the Shoreline Management Act, the Seattle Shoreline Master Program or the State Environmental Policy Act. It should therefore be affirmed.

XIII

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From these Conclusions of Law, the Board enters this

ORDER

The shoreline substantial development permit granted by the City of Seattle to Lorry Clark is hereby affirmed.

DONE at Lacey, WA, this 9th day of October, 1990.

SHORELINES HEARINGS BOARD

JUDITH A. BENDOR, Chair

HAROLD S. ZIMMERMAN, Member

(Not available for signature)
WICK DUFFORD, Member

NANCY BURNETT, Member

MARY LOU BLOCK, Member

WILLIAM A. HARRISON
Administrative Appeals Judge

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

In the matter of the Petitions of Michael A. Atkins for a Declaratory Ruling	ORDER DECLINING TO ENTER A DECLARATORY ORDER

On February 16, 1990, and March 6, 1990, petitioner Michael A. Atkins filed two petitions for Declaratory Rulings. Petitioner is the attorney for appellant, A Committee of Concerned Residents, in Committee of Concerned Residents v. Seattle and Clark, SHB No. 89-69. The issues raised in the two petitions relate to the sufficiency of the type of notice used in Seattle's handling of the Clark application.

NOW THEREFORE IT IS ORDERED: that the Board declines to enter a declaratory order on the petitions because:

1. Each issue therein can be raised within the request for review of the permit approval, Committee of Concerned Citizens v. Seattle and Clark, SHB No. 89-69, and

2. Separate declaratory orders would involve a process duplicative of the existing process of review for permit approval.

DONE at Lacey, WA, this 9th day of March, 1990.

SHORELINES HEARINGS BOARD

JUDITH A. BENDOR, Chair

WICK DUFFORD, Member

HAROLD S. ZIMMERMAN, Member

NANCY BURNETT, Member

WILLIAM A. HARRISON
Administrative Appeals Judge